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Supreme Court, U.S.
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88-345

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

THE STATE OF FLORIDA,

Petitioner,

vs.

OLIVER WENDALL BELCHER,

Respondent.

ON WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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QUESTION PRESENTED

If a suspect in a criminal case a.) has been advised of his rights under Miranda, b.) answers some questions put to him and then c.) expresses his desire to cut off questioning, do the police fail to "scrupulously honor" his Fifth Amendment rights by later asking him threshold questions directed solely to whether or not he would consent to any further questioning without first re-advising him pursuant to Miranda?

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OPINION BELOW

The opinion of the Third District Court of Appeal of Florida affirming the trial court's suppression order can be found at State v. Belcher, 520 So.2d 303 (Fla. 3 DCA 1988). It is reproduced in the appendix. (App. 1-11).

The Florida Supreme Court's denial of discretionary review is also part of the appendix. (App. 12, 13).

STATEMENT OF JURISDICTION

The opinion of the Third District Court of Appeal of Florida was entered on February 2, 1988. Rehearing was denied on March 17, 1988. The Florida Supreme Court declined to accept the case on June 30, 1988. This petition was filed within 60 days of that denial. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent part of the Fifth Amendment to the United States Constitution provides:

> [N]or shall [any person] be compelled in any criminal case to be a witness against himself...

The pertinent part of the Fourteenth Amendment to the United States Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

Respondent was arrested and charged in a double homicide. He made incriminating statements to the police. The trial court suppressed those statements. The Florida appellate courts have affirmed. This petition follows.

Respondent was first questioned by a Detective Conley concerning his connection to a double homicide. Miranda warnings were duly given. Respondent signed a rights waiver form. Conley questioned respondent for several hours, during which time respondent twice requested permission to examine his rights waiver form. He was allowed to do so. Respondent decided to cut off police questioning following his second

examination of the form. Questioning ceased.

Detective Blocker, not present during this round of questioning but aware that respondent had invoked his right to remain silent, entered the interrogation room approximately one hour after Conley had finished. Without first re-advising respondent of his Miranda rights, this officer proceeded to explain the difference between first and second degree murder to respondent. He also informed respondent that all the evidence at hand pointed to first degree murders having been committed. Blocker then asked respondent if he would like to tell his side of the story. Respondent asked to be left alone for a few moments to think things

over. His wishes were again respected, and Blocker left. When Blocker returned five minutes later, he asked if respondent wished to talk, and respondent said, "Just get your pad and pencil." He then volunteered an incriminating statement. This oral statement was followed by a formal written one which contained the standard Miranda warnings in the text.

The trial court ruled that respondent's right to have questioning cease was not "scrupulously honored" by Blocker and it suppressed all statements. The Third District Court of Appeals affirmed, citing this Court's decision in Michigan v. Mosley, 423 U.S. 96 (1975).

ARGUMENT

Why Review Should Be Granted

Review should be granted because the Florida courts have not construed this Court's Miranda[1] decision in a common sense fashion. Miranda should not be used in a manner which prevents mere inquiry into the threshold question of a suspect's desire to allow further contact with the police. The Florida court's have done just that, and Miranda has been misapplied.

In Michigan v. Mosley, supra, this Court recognized that:

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

> "[A] blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of the circumstances, would transform the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." Mosley, at 102.

The Court went on to state that Miranda's goal was to prevent the creation of a coercive atmosphere, and that this goal is met if the police respect a suspect's wishes to break off questioning.

Mosley addressed the issue of renewed police interrogation of a suspect once that suspect had invoked his

right to break off questioning. This Court found that police may properly submit a suspect to continued interrogation, and it listed several factors which would indicate that the police had indeed "scrupulously honored" the Fifth Amendment rights of the accused. Among these factors were the re-advising per Miranda before questioning re-commenced and the passage of time between interrogation sessions.

In this case, respondent signed a rights waiver form and submitted himself to questioning by Detective Conley. He twice read over that form during his time with Conley, and finally invoked his right to break off questioning. His wishes were honored by Conley.

One hour later, Detective Blocker arrived and merely inquired if respondent would agree to resume questioning. He did not subject respondent to interrogation. Respondent asked for a few minutes to think it over, and again his wishes were respected. Blocker left. When Blocker returned, respondent had changed his mind about wanting to talk to the detectives, and he then **volunteered** an incriminating statement. Blocker had **never** directed any questions to respondent.

This case must be distinguished from Mosley's "double interrogation" scenario. It should be viewed as one which goes more to the question of how police may inquire if a suspect wishes to resume contact after invoking

Miranda. Are the police constitutionally required to repeat their Miranda warnings as a condition precedent to even asking if a suspect would consent to further contact? The Florida courts have answered in the affirmative. Logic dictates that the answer should be "no."

According to Miranda and Mosley, the analysis of this issue should be directed to the overall goal of the warnings, the degree of police compliance with a suspect's wishes, and the scope of a policeman's right to have further contact with that suspect. These considerations must be examined alongside the particular facts of the case. If that is done, it is clear that:

a.) A coercive atmosphere did not exist below. Respondent was fully aware of his rights, having read and signed a waiver form and having twice re-read that form.

b.) The police respected respondent's requests to break off questioning each time he asked them to do so. Detective Conley left respondent alone immediately. Blocker came in one hour later and left as soon as respondent told him to let him think over whether he wanted to resume talking.

c.) Finally, Blocker's contact with respondent was **not** tantamount to a second round of interrogation. Rhode Island v. Innis, 446 U.S. 291 (1980). All respondent was left with was the

issue of whether or not he would allow a resumption of questioning. Blocker did not question him on any aspect of the crimes. Respondent volunteered his statement to Blocker. This scenario is therefore subject to less criticism than that of Mosley, where two interrogation sessions were involved.

The Florida courts have misinterpreted Miranda and Mosley to require a re-advising by Detective Blocker prior to his inquiring into respondent's desire to renew questioning. What Blocker did was merely prefatory to questioning. The Constitution did not require him to repeat Miranda warnings.

CONCLUSION

This Court should grant review because an important question of law has been raised. Miranda should not be interpreted to place an impenetrable wall between police and the accused once that person has invoked his right to remain silent. Police should be allowed to inquire of a suspect if he or she wishes to re-commence contact without first re-advising that suspect of his Miranda rights, and any volunteered statement which emerges should be admissible in evidence.

Respectfully submitted,

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Attorney General

STEVEN T. SCOTT
Assistant Attorney General

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

THE STATE OF FLORIDA,

Petitioner,

vs.

OLIVER WENDALL BELCHER,

Respondent.

ON WRIT OF CERTIORARI TO THE
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APPENDIX

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The STATE of Florida, Appellant,

v.

Oliver Wendall BELCHER, Appellee.

No.87-7.

District Court of Appeal of Florida,

Third District.

Feb. 2, 1988.

Rehearing Denied March 17, 1988.

Robert A. Butterworth, Atty. Gen., and Margarita M. Febres, Asst. Atty. Gen., for appellant.

Bennett H. Brummer, Public Defender, and Marti Rothenberg and Harvey J. Sepler, Asst. Public Defenders, for appellee.

Before **HENDRY, BASKIN** and **FERGUSON, JJ.**

PER CURIAM.

The State appeals from an order granting the defendant's motion to suppress his confession.

Ann DeMuro and Charles Woods were robbed and murdered as they opened a builders' supply company in the early morning of January 30, 1985. Oliver Belcher, a former employee of the company, was taken into custody three days later at 12:30 a.m. and charged with the murders. At approximately 1:55 a.m., Detective Conley approached Belcher in the interview room and informed him of the charges and read him his Miranda rights. Stating that he understood his rights and was willing to speak without an attorney present, Belcher signed a rights waiver form. In response to questioning, the defendant admitted that he had taken a car belonging to one of the murder victims, but denied that he had committed the murders. Conley continued to question Belcher until 4:50

a.m., at which time the defendant said to Conley, "I don't want to talk to you any more." Conley stopped questioning the defendant and left the room.

A short time later Conley placed a telephone call to another detective on the case, Blocker. Conley informed Blocker that the police had arrested Belcher and that Belcher denied any involvement in the murders and no longer wanted to talk to him. When Blocker arrived at the police station at approximately 6:00 a.m., the defendant was still sitting in the interview room. Blocker entered the interview room, introduced himself to the defendant, and told the defendant that he wanted to hear his side of the story. At no time did Blocker reinform the defendant of

his Miranda rights. The defendant responded that he wanted to think about it and would like to be left alone. Blocker left the room for five minutes. He then returned to the interview room and again asked the defendant if he wanted to talk to him. The defendant replied, "Just get your pad and pencil," and then gave a confession.

Prior to trial, the defendant moved to suppress his confession on grounds that the police had violated his Miranda rights and his privilege against self-incrimination. At the suppression hearing Detective Blocker testified that it was his impression that, when the defendant told Conley that he no longer wanted to talk, the defendant intended

that statement to apply only to Conley, and not to other police officers. Blocker admitted, however, that he never asked the defendant to clarify the statement. The trial court granted the defendant's motion to suppress the confession, ruling that once the defendant had exercised his option to remain silent, his right to terminate questioning was not scrupulously honored.

The State contends that the trial court erred in concluding that the defendant's rights were not scrupulously honored, and argues that the confession is admissible because it was obtained pursuant to reasonable police conduct. We disagree and affirm.

In Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975), the Supreme Court held that the admissibility of statements obtained after a suspect has cut off questioning depends on whether the suspect's "right to cut off questioning" was "scrupulously honored." Id. at 104, 96 S.Ct. at 326, 46 L.Ed.2d at 321. The critical factors in a determination whether a suspect's rights were scrupulously honored include:(1) whether the police ceased the interrogation immediately upon defendant's request; (2) whether the questioning was resumed only after a significant amount of time had passed; (3) whether fresh Miranda warnings were provided; and (4) whether the later questioning was restricted to a crime that had not been the subject of the

initial interrogation for which the right to silence had been invoked. Mosley.

In this case, Detective Conley stopped the interview when Belcher exercised his right to cut off questioning. However, the other factors set forth in Mosley support the trial court's conclusion that the defendant's right to cut off questioning was not scrupulously honored.

After the defendant had invoked his right to silence, the police continued to detain him in the interrogation room. The first detective placed a telephone call to a second detective who arrived at the station house and attempted to renew questioning after a

passage of time approximating an hour. When the defendant asked the second detective to leave him alone to allow him time to think things over, the detective merely stepped outside the interview room for five minutes. Although the Supreme Court did not define in Mosley what constitutes a "significant period of time," some courts have found periods of time ranging from minutes to several hours to be insufficient under the Mosley standard. United States v. Clayton, 407 F.Supp. 204, 206 (E.D.Wis.1976) (fifty minutes insufficient even where defendant was given new Miranda rights and signed waiver); United States v. Olof, 527 F.2d 752 (9th Cir.1975) (three hours insufficient despite new warnings where police sought to wear down

defendant). Other courts have found periods of time ranging from less than an hour to several hours to be sufficient where the defendant was given fresh Miranda warnings and the defendant waived his rights. McNickles v. State, 505 So.2d 633 (Fla. 4th DCA) (forty-five minutes sufficient where new warnings were given and defendant waived his rights), rev. denied, 515 So.2d 230 (Fla. 1987); State v. Issac, 465 So.2d 1384 (Fla. 2d DCA 1985) (one hour and forty minutes sufficient where defendant was advised of rights and waived them). Here, however, Detective Blocker neither advised Belcher of his rights when he first attempted to question him nor informed him of his rights when the questioning resumed five minutes later.

Although requestioning a defendant about the same crime following a invocation of the right to silence is not alone determinative of whether the invocation was scrupulously honored, Jackson v. Wyrick, 730 F.2d 1177, 1180 (8th Cir.) cert. denied, 469 U.S. 849, 105 S.Ct. 167, 83 L.Ed.2d 102 (1984), it is a significant factor in determining whether the right to cut off questioning was respected and, when coupled with a short passage of time and a failure to give fresh warnings, has been held fatal. United States v. Lopez-Diaz, 630 F.2d 661, 664 (9th Cir.1980); United States v. Hernandez, 574 F.2d 1362, 1369 (5th Cir.1978).

The record supports the trial court's ruling that the defendant's

right to cut-off questioning was not scrupulously honored. A trial court's ruling on a motion to suppress has a presumption of correctness, and where the record supports the trial court's ruling, it is impermissible for the district court to substitute its judgment for that of the fact-finder. Wasko v. State, 505 So.2d 1314, 1316 (Fla.1987); DeConingh v. State, 433 So.2d 501 (Fla.1983), cert. denied, 465 U.S. 1005, 104 S.Ct. 995, 79 L.Ed.2d 228 (1984).

Affirmed.

SUPREME COURT OF FLORIDA

Thursday, June 30, 1988.

STATE OF FLORIDA,	)	
Petitioner,	)	
v.	)	Case No. 72,188
	)	District Court of Appeal
OLIVER WENDELL BELCHER,	)	Third District No. 87-7
Respondent.	)	
	)	

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla.R.App.P. 9.330(d).

MCDONALD, C.J., EHRLICH, SHAW, BARKETT AND GRIMES, JJ., concur.

A True Copy
TEST:

Sid J. White
Clerk Supreme Court

By: //s//
Deputy Clerk

H

cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Alfonso Sepe, Judge

Margarita Muina Febres, Esquire
Marti Rothenberg, Esquire